***THE HON'BLE SRI JUSTICE P.S.NARAYANA**

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+ WRIT PETITION No. 2803 of 1997

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%Dated 17.02.2005

Juplli Srinivasa Rao, S/o Sri Bhama Rao,
R/o Sircilla, Karimnagar Distruct.

..... PETITIONER

AND

$ The Commissioner, Municipality,
Sircilla, Karimnagar District.

.....RESPONDENT

! Counsel for the Petitioner: MR.B.V.BAKSHI

^ Counsel for the Respondent: POLISETTI RADHA KRISHNA

< GIST:

> HEAD NOTE:

? Cases referred

Nil

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO: 2803 of 1997

Between:

Juplli Srinivasa Rao, S/o Sri.Bhama Rao,
R/o Sircilla, Karimnagar Distruct.

..... PETITIONER

AND

The Commissioner, Municipality,
Sircilla, Karimnagar District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pass orders in respect of calling for the records in File No.B/282/95 dt.03-08-96, and an order or direction or a writ particularly one in the nature of certiorari be passed, and the said revocation of the permission granted in B/1686/93 dt.31-01-94 vide No.B1/282/95 dt.03-08-96 on the file of the respondent be set aside; i) Costs be awarded; ii) Any other relief be granted.

Counsel for the Petitioner: MR.B.V.BAKSHI

Counsel for the Respondent: POLISETTI RADHA KRISHNA

The Court made the following:

HONOURABLE MR.JUSTICE P.S.NARAYANA

WRIT PETITION NO.2803 OF 1997

ORDER:

Jupalli Srinivas Rao, the writ petitioner had invoked the jurisdiction of this Court under Article 226 of the Constitution of India being aggrieved of the order made

by the respondent dated 03-08-1996, by virtue of which, it is stated that the permission which was already granted in B/1686/93 dated 31-01-1994 vide No.B1/282/95, had been revoked.

2. Heard Sri B.V.Bakshi, learned counsel representing the writ petitioner and Polisetti Radha Krishna, learned Standing Counsel representing the respondent-Commissioner Municipality, Sircilla.

3. The learned counsel representing the writ petitioner had pointed out that the Regional Deputy Director of Town and Country Planning, Warangal, vide proceedings in Roc.No.566/95/WRD/W2 dated 03-04-1996, in fact, had advised the Municipal Commissioner to follow the opinion given by the Municipal Standing Counsel at the reference 11th cited and granted building permission to applicants cited in reference No.3, 14, 15 and 16 and let the ownership of the property be decided by the Civil Court among the disputed people and the Town Planning staff may not interfere with their construction as long as the proposed constructions are satisfying the plans approved by the Municipality. The learned counsel also pointed out that No.16 in the said proceedings is the file No.G1/202/95 application of Sri Jupalli Srinivas Rao/ the present writ petitioner, for granting permission. The learned counsel also contended that this is an administrative order, no doubt, involving civil consequences and not only it is not a reasoned order, but also it is an order made without following any procedure at all and totally contrary to the directions issued by the Regional Deputy Director of Town and Country Planning, Warangal, in the reference cited supra. The learned counsel would maintain that even otherwise inasmuch as this is a case of revocation of the approved plan, Section 344 sub-section 6 proviso of the Andhra Pradesh Municipalities Act, 1965 (herein after referred to as 'the Act' for brevity) would come into play and in view of the same, the question of preferring an appeal under Section 345 of the said Act, would not arise.

4. Per contra, Sri Polisetti Radha Krishna, learned Standing Counsel for the respondent would maintain that under Section 345 of the Act, the remedy of

appeal is available and without exhausting the said remedy, the writ petitioner approached this Court straight away and hence, on the ground of availability of an effective alternative remedy, the writ petition is bound to fail. The learned counsel also made an attempt to show that the order impugned in the writ petition is a fresh order, and hence, the question of revocation does not arise.

5. Heard both the counsel.

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6. On 14-02-1997, this Court while ordering notice before admission, suspended the impugned order dated 03-08-1996 pending admission of the writ petition and in W.P.M.P.No.3348 of 1997 by order dated 15-04-1997, the said order had been extended until furthers.

7. The petitioner purchased an open piece of land admeasuring 176 square metres near the premises bearing No.08-03-60 in Sircilla Town. It is stated that along with the writ petitioner many others also similarly purchased certain piece of lands for the purpose of constructing residential houses. They applied for permission on 21-12-1993 to construct buildings in their respective piece of lands and in the first instance permission was granted to the writ petitioner with certain modifications in the applied plan vide file No.B/1686/93 dated 31-01-1994. It is stated that subsequent thereto for unspecified reasons the permissions were revoked. The writ petitioner and some similarly placed others approached the Regional Deputy Director of Town and Country Planning, Warangal. The Regional Deputy Director of Town and Country Planning, Warangal, vide his proceedings in Roc.No.566/95/WRD/W2 dated 03-04-1996, directed the Commissioner, Municipal Council, Sircilla, to grant permission. The said proceedings of the Regional Deputy Director of Town and Country Planning, Warangal, addressed to the Commissioner Municipal Council, Sircilla, the respondent herein, which reads as hereunder:

"Sir,

Sub:- Town Planning – Sircilla Muncipality – B.A.

of Sri Valakonda Narsinga Rao – Sanctioned

Building permission revoked – Building

permission – Requested – Reg.

Ref:- 1) Petition of Smt. Bhaamarapu Anjamma, dated:

01- 07-1995

2) Fee receipt of Rs.2,855/- M.R.No.17869 dt:21-09-1994

3) Plan approved proceedings of MC., Sircilla bearing No.61/2936/94, dt:01-11-1994

4) Encumbrance Cert.No.883/94, dated: 18-04-1994

5) Sale Deed dtd.09-04-1984

6) Sale Deed dtd.01-11-1994

7) Show Cause notice of Sircilla Muncipality Roc.No.G1/2936/94, dt.04-05-1994.

8) Reply notice of Sri Narsinga Rao dtd: 04-05-1995.

9) T/o Lr.Roc.No. Dtd:01-08-1995, and to the M.C.Sircilla.

10) Lr.Roc.No.G1/2936/94, dt:28-09-1995 and to t/o

11) Opinion of Mpl. Standing Councel, Sircilla dtd: 12-05-1995

12) File No.114/17/75, approved site plan in respect of H.No.8-3-68

13) File No.159/G1/95-objection Petition of Sri Pendyala Narsaiah, Dumala Saibu and others.

14) File No.G1/195/95 application of Sri Ch.Venkateshwarlu for permission.

15) application of Sri Nagabhushanam for permission

16) File No.G1/202/95, appln. Of Sri J.Srinivasa Rao for permission.

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With reference to the subject cited, it is to inform you that in the reference 3, 14, 15 and 16 permissions were requested for construction of residential buildings in the open place surrounding the Door No.08-03-1960. The said builders represent this office to give the building permission for their houses. After examining the above documents it is observed that once the building permissions were accorded to the said individuals by the Sircilla Muncipality and the same were revoked by the Municipal Commissioner, Sircilla under Section 215 of APM Act, 1964.

During my camp at Sircilla on 25-02-1996, I have inspected the site under reference

along with the Town Planning Asst. of this office and the Municipal Commissioner of Sircilla. Smt. Anjanamma has completed the construction of residential building upto 90% and only finishing-work was left over. The permissions of items 3, 14, 15 and 16 related to the same area.

After examining all the above references, it was observed that the Municipal Commissioner has given the grounds for revoking the granted building permissions which is required under section 215 of APM Act. As seen from the proceedings of the granted building permission the condition in No.13 is, the building permission granted by the Municipality in the name of the individual will not give any right on the ownership of any land. If the proposed land use is in conformity with the sanctioned Master Plan of Sircilla Municipality, if the construction is in accordance with the approved building permission by the Municipality, revoking the building permission by the Municipal Commissioner without assigning any reason is not correct.

Hence, the Municipal Commissioner is hereby advised to follow the opinion given by the Municipal Standing Council at reference 11th cited and grant the building permission to the applicants cited in the reference 3, 14, 15 and 16 and let the ownership of the property may be decided by the Civil Court among the disputed people and the Town Planning Staff may not interfere in their construction as long as the proposed constructions are satisfying the plans approved by the Municipality."

8. It is also stated that the writ petitioner received the communication bearing No.B/282/95 dated 03-08-1996 informing that the permission had been revoked in view of E.I. Plans and the same had been challenged in the present writ petition. It is further stated that the rejection amounts to depriving the petitioner properly enjoying his property which is violative of Articles 300-A and 21 of the Constitution of India. Further specific stand was taken that the same is in violation of principles of natural justice and also Section 344 (6) proviso of the Act referred to supra.

9. While making submissions, the learned counsel representing the writ

petitioner also had brought to the notice of this Court the notice dated 17-03-1997 issued by the respondent in this regard.

10. From the material available on record, there cannot be any doubt or controversy that this is only revocation of the plan, which had been already approved in favour of the writ petitioner.

11. Section 209 of the Act deals with application to construct or reconstruct buildings and the provision, reads as hereunder:

209. Application to construct or reconstruct buildings:--

1. If any person intends to construct or reconstruct a building other than a hut, he shall send to the Commissioner--

a. an application in writing for the approval of the site, together with a site plan of the land, and

b. an application in writing for permission to execute the work together with ground-plan, elevations and sections of the building, and a specification of the work.

Explanation:-- 'Building' in this sub-section shall include a wall or fence of whatever height bounding or abutting on any public street.

("(c) a copy of the title deed of the land duly attested by a Gazetted Officer of the Government together with an urban land ceiling clearance certificate or as the case may be, an affidavit referred to in Section 184."

(2) Every document furnished under Sub-section (1) shall contain such particulars and be prepared in such manner as may be required under rules or bye-laws."

12. Section 216 of the Act dealing with Lapse of Permission reads as hereunder:

"216. Lapse of permission:--

If the construction or reconstruction of any building is not completed within

the period specified, the permission shall lapse and a fresh application shall be made before the work is continued."

13. Section 344 of the Act deals with the general provisions regarding licences and permissions. Subsection 6 of Section 344 of the Act reads as hereunder:

"Section 344. General provisions regarding licences and permissions:-

(1) -- -- -- (2) -- -- -- (3) -- -- -- (4) -- -- -- (5) -- -- --

(6) Subject to the special provisions in Chapters IV and VI of Part V regarding buildings and private markets and subject to such sanction as may be required for the refusal of a licence or permission, any licence or permission, granted under this Act or any rule or bye-law made under it, may at any time be suspended or revoked by the Commissioner in consultation with the person or authority granting the licence or permission if any of its restrictions, limitations or conditions is evaded or infringed by the grantee, or if the grantee is convicted of a breach of any of the provisions of this Act, or of any rule, bye-law or regulation made under it in any matter to which such licence or permission relates, or if the grantee has obtained the same by misrepresentation or fraud;

A proviso appended thereto specifies that:

"Provided that the grantee shall be given an opportunity to show

cause against such suspension or revocation."

14. In the light of the proviso to sub-section 6 of Section 344 of the Act and also on the observance of principles of natural justice, even in the case of an administrative order involving civil consequences, submissions at length were made. No doubt, the learned Standing Counsel pointed out that there is an alternative remedy of appeal provided under Section 345 of the Act.

15. Here is a case of revocation made by the respondent contrary to the directions issued by the higher-ups. Apart from it, it is pertinent to note that before making the impugned order, no opportunity was given to the writ petitioner to show cause against the said revocation. No doubt the learned

Standing Counsel for the Municipality had taken a stand that this would not amount to revocation at all.

16. The Chambers Dictionary while dealing with the word **revoke,** stated that:

> "**revoke-**to recall, call back (now rare); to withdraw (Spenser); to check (Spenser); to annul; to retract.—*vi* to make revocations; to neglect to follow suit at cards. – *n* revocation, recall; the act of revoking at cards.—*adj* **revocable.—***n* **revocableness** o r **revocability. –** *adv* **revocably. –** Also **revocable,** etc. – *n* **revocation** recall; the act of revoking. – *adj* **revocatory. – *n* revokement** (Shakesp) revocation. (L *revocare,* from *vocare* to call)"

Likewise, in the New Oxford Dictionary of English it is stated that:

> "**revoke-**verb **1** (with obj.) put an end to the validity or operation of (a decree, decision, or promise): *the men appealed and the sentence was revoked*. **2.** (no obj.) (in bridge, whist, and other card games) fail to follow suit despite being able to do so.
>
> DERIVATIVES **revocation** noun, **revocatory** adjective, **revoker** noun
>
> -ORIGIN late Middle English: from Old French *revoquer* or Latin *revocare*, from *re*-'back' + *vocare* 'to call'."

17. However, the contentions on behalf of the respondent to be rejected by this Court for the reasons recorded above. In a case of this nature, where the procedure had not been followed by the respondent and just an unreasoned order involving civil consequences, which is adverse to the writ petitioner, had been made in derogation and also contrary to the directions already issued by the Regional Deputy Director of Town and Country Planning, Warangal, and also in violation of the specific statutory provision of Section 344 (6) proviso of the Act, the contention that by virtue of the availability of the appellate remedy, the writ petitioner is not entitled to the relief prayed for, cannot be accepted.

18. Hence, for the foregoing reasons, the writ petitioner is bound to succeed and accordingly, the writ petition is hereby allowed. No order as to

costs.

P.S.NARAYANA, J

17th February, 2005.

SKM

L.R. Copy to be marked.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the seventh day of February Two thousand and Five.

REGISTRAR

One fair copy to the Honourable Mr. Justice P.S.Narayana (for his Lordship's kind perusal.)

Copy to

1. The commissioner, Municipality,

Sircilla, Karimnagar District.

2. 8 L.R. Copies.

3. The Under Secretary, Union of India, Ministry of Law,

Justice and Company affairs, New Delhi.

4. The Secretary, AP Adovocate’s Association Library, High Court Buildings, Hyderabad.

5. Two C.D. Copies.